

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Reallocation of Television Channels ) ET Docket No. 97-  
60-69, the 746-806 MHz Band ) 157

To: The Commission

**COMMENTS**

KM Broadcasting, Inc. ("KMB"), hereby submits its comments in the above-referenced proceeding in response to the Notice of Proposed Rule Making ("NPRM"), FCC 97-245, released by the Commission on July 10, 1997.<sup>1</sup> KMB is the licensee of LPTV station W14BN in Richmond, Virginia. Its principals also have an ownership interest in a construction permit for W60BR, in Chesapeake, Virginia. As such, KMB urges the Commission to adopt measures which protect existing LPTV operators, including all parties holding LPTV authorizations, to the greatest extent possible. The Commission must maintain its past and present position that those LPTV operators required to abandon UHF channels 60-69 should be allowed the maximum flexibility in locating a new channel for operation. In addition, the Commission should use the opportunity presented by this rule making to establish some type of regulatory process to identify the pool of channels available in each market both for LPTV displacement channel purposes and to satisfy the current need for

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<sup>1</sup> The NPRM established the Comment date as 45 days from the publication in the Federal Register. Publication was effected in 62 FR 41012, dated July 31, 1997. Consequently, these Comments are timely filed.

unresolved full-power station applications. The Commission should take these steps before opening up these reallocated channels to new broadcast license applications. This procedure would allow the Commission to license television stations in the future in an orderly fashion, while resolving any demands for existing channels at the earliest possible date. In support whereof the following is submitted.

**I. The Commission is Urged to Maintain its  
Current Position To Protect Displaced LPTV Stations**

First and foremost, KMB urges the Commission to maintain its current position with respect to displaced LPTV stations. The Commission is now, and in the past, specifically committed to the preservation of displaced LPTV channels. As it stated in the NPRM:

In our *DTV Proceeding*, we found that there is insufficient spectrum to preserve all existing LPTV and TV translator stations, and concluded that LPTV and TV translator stations should retain their secondary allocation status. We also stated our continuing belief that the important benefits of spectrum recovery, such as providing new spectrum for public safety, outweigh the impact this action will have on secondary LPTV and TV translator operations." In the DTV proceeding, we adopted a number of changes to our rules, however, to mitigate the impact on LPTV and TV translators. *These rule changes included allowing LPTV stations displaced by new DTV stations to apply for suitable replacement channels; considering such applications on a first-come, first-served basis without subjecting them to competing applications; and technical rules changes to provide additional operating flexibility for low power stations.*" We also stated that any industry negotiation and coordination efforts must be open to all parties, including LPTV stations. In addition, LPTV and TV translator operations will not be required to alter or cease their operations until they actually cause interference to new DTV service or to any primary services operating in the 746-806 MHz band... As noted above, we have already taken a variety

of steps in the *DTV Proceeding* to provide more flexibility for low power operations. These measures would of course be similarly available to low power operations on channels 60-69.

The Commission then states that:

One option would be to provide some level of accommodation to low power operations in channels 60-69 until the end of the DTV transition period in the year 2006, in order to give these stations time to relocate to other portions of the spectrum, change transmission channels, seek licensing as primary services, or otherwise modify their operations.

This is the minimum accommodation, at least in terms of time, that should be permitted allow LPTV operators to respond to the changes to their operations necessitated by the DTV conversion plan and the new proposed reallocation of spectrum.<sup>2</sup>

Overall, the Commission must maintain this commitment to LPTV stations throughout this proceeding. It is only in this fashion that the equitable reallocation of spectrum proposed herein can be accomplished.

## **II. KMB Proposal To Identify Pool of Available Channels**

The Commission in the NPRM at ¶20 requested comment on the issue of accommodation of displaced LPTV and TV translator stations and whether it should allow incumbent LPTV and TV translator stations to negotiate private arrangements with new licensees under which the new licensees would tolerate otherwise unacceptable levels of interference from LPTV or TV translator

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<sup>2</sup> Any Commission relief should extend to the end of the transition period whenever that occurs, either in the year 2006 or beyond, if the criteria for returning analog channels adopted by Congress in the recent budget legislation remains the law of the land in the year 2006.

stations, and whether we should provide incentives to new licensees to seek such arrangements. The Commission also invited commentors to suggest alternative ways we might alleviate the impact of this allocation on low power operations.

One of the main problems in any discussion of possible accommodations for eligible LPTV stations is that there is little or no way at this time to identify with any certainty the pool of what the Commission itself refers to as "suitable replacement channels". That is because, while the FCC has otherwise frozen new television applications while it develops an allotment table for the digital conversion channels for full power television stations, the pool of channels is still subject to change in several areas. There are LPTV stations displaced by the digital conversion channels and LPTV stations displaced by the conversion of channels 60-69 to public safety use. Furthermore, as the Commission notes in the NPRM at ¶21:

More than 200 petitions for reconsideration of the *DTV Proceeding Sixth Report and Order* have been filed. Many of these petitions request allotments in channels 60-69 during the DTV transition period. Our decisions on these petitions could affect the allocations proposed herein. If any additional DTV full service allotments are made as a result of these petitions, they would be afforded full protection during the DTV transition period. Further, in addition to the 73 licensed stations on channels 60-69, construction permits have been authorized to 22 stations, of which 11 operate under program test authority. There are also 78 applications on file for 33 stations on these channels which have been accepted or tendered for filing, of which 33 request waivers of the TV filing freeze and have not been accepted for filing. In addition, there are 9 petitions for rule making on file, requesting changes in the TV Table of Allotments to allow applicants to apply for TV broadcasting licenses in channels 60-69.

As the foregoing demonstrates, there remains an enormous demand for television channels based solely on existing allocations and applications.

In order to make a rational allotment of channels for all of the affected parties and parties whose channel allotment are still in question, and prior to opening the doors for additional television applications, it is critical for the Commission to establish a process that finalizes the number of parties that need accommodation in each market, as well as the number of available channels in each market. This must be done so that all existing parties know exactly what they are facing in each market in order to protect their existing authorizations, prior to allowing new parties to enter the market and further complicate the channel assignment process.

This could be done in the following manner. In Phase One, the Commission would establish a filing window for all affected, existing and eligible parties, full power and low power, to file an application for any new channel necessary under the proposed displacement policies.<sup>3</sup> Accompanying that application would be a required engineering study which would describe all available channels in the market, not just the channel for which displacement relief is sought. Using the consensus among the overall engineering studies filed by the applicants themselves, the Commission would then open Phase Two. This would allow all applicants in a particular market a limited amount of time (six

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<sup>3</sup> These are essentially the parties just described.

months to a year) to negotiate and coordinate the available channels among themselves based on the engineering consensus in each market.

If all needed channels could be accommodated, then the final plan for a market would be submitted to the Commission for approval and the issuance of licenses.<sup>4</sup> If not, then Phase Three would provide for the auction of all available channels as identified in the engineering consensus. In the case of an auction, eligibility would be limited to those parties participating in the specific market proceeding up to the at time. No new entrants would be allowed to participate at that time. New license would authorize digital transmission only, even if limited to power levels less than full power stations. Phase Four would then provide for the auction of any remaining channels to newcomers, including the newly-allocated channels on Channels 60-69.

If there was a stalemate at Phase Three as described above, the Commission would still have to maintain its commitment to displaced LPTV stations to award analog displacement channels, which displacement licenses would remain in effect until the end of the DTV transition period. These displacement licenses would

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<sup>4</sup> This need not be a typical full market settlement. For example, assuming there are four parties eligible in a particular market, but there are only three available channels. Any settlement which provides that the fourth party agrees to withdraw from the proceeding and wait for a future auction of channels in that market, if any such auction ever occur, would be an acceptable settlement, even though all four parties do not receive a license as a result of the settlement.

then be subject to any proceeding in which the Commission changes the status of LPTV stations from its current secondary status. This would only be reasonable, since the licensee would have been continuous, the only interruption in operating status due to the Commission's displacement of the station through the DTV allocation process.

The foregoing proposal would meet the goal of defining the limits of channel availability in each market, so that the final determination of new channel assignments is rational and fair for all affected parties. This would also allow the parties themselves to give notice to all other affected parties their estimate of the available channels in a given market.<sup>5</sup>

This will also resolve the problem the definition of displaced channels. While the Commission has repeatedly referred to the protection of LPTV stations which are displaced, no clear definition of the term "displaced" has emerged at this time. Theoretically, an existing LPTV station is not actually displaced until it interferes with an existing licensee, in this case, when it interferes with a full-power station which permanently activates its second, digital channel and returns its primary channel as scheduled in the year 2006. However, assuming the Commission adopts this scheme, in the not-too-distant future, then a displaced station would be an LPTV station eligible to

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<sup>5</sup> The use of a consensus would also eliminate the incentive some parties might have to produce studies which artificially lower the amount of available channels. Of course, the final determination would be up to the Commission and its staff to determine the availability of a specific channel.

participate in Phase One by virtue of its proposed displacement by the DTV allotment. This would for all practical purposes establish the definition of a displaced station as an LPTV station faced with the proposed loss of its channel.

Since one purpose of this proceeding would be to inject, at least in some measure, the principle of administrative finality into the availability of television channels in a proposed market, the Commission could put all parties on notice that their failure to participate in this proceeding would mean no further licensing remedies for displacement would be available to such party in the future.

If the Commission rejects the foregoing, it still seems that some type of window procedure, rather than the filing of applications willy-nilly on first-come, first served basis would be preferable. The Commission needs to establish some parameters for affected parties to know with certainty what channels are available at each stage of the DTV conversion process and the reallocation of channels 60-69. Without some type of definition, it is conceivable that a type of "daisy-chain" effect could develop, as affected parties continue to propose channels for use which impose on other proposed channels.

The Commission must also maintain its prior and continuing commitment to displaced LPTV stations. This commitment alone mandates some type of opportunity for either affected parties or



the Commission to define the pool of available channels.<sup>6</sup>

Also, the issue of channel equivalency will be resolved by the parties and not by the Commission. At the very least, the affected parties would have the opportunity to negotiate which channel would be most satisfactory as a replacement channel, the criteria for which would presumably include the notion of channel equivalency.

It should be noted that it is not proposed herein to include the full-power stations as eligible parties in this type of proceeding. At the most, full-power stations' participation should be limited to the filing of comments on the overall allotment proposals for a market in which a full-power station is located. Otherwise, the participation of full-power stations will only serve to prolong what already could prove to be a lengthy process.

The Commission also requested comment on whether it should allow public safety and new service licensees in the 746-806 MHz band to make arrangements with broadcast licensees and permittee for ceasing existing or planned broadcast operations in this band or relinquishing their interest in a new station on these channels. If so, could such arrangements include monetary

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<sup>6</sup> The Commission developed and utilized software for the proposed table of allotments for digital conversion channels. It would seem that the same software could be used to identify remaining channels, using the existing engineering parameters for protection of the existing and proposed stations, of course, compensating in the software program for the lower transmission power of LPTV stations. Allowing parties to submit their own table of available channels for each market might accomplish the same goal.


compensation?

Any LPTV station ultimately displaced by the reallocation of channels 60-69 should be compensated for their cessation of broadcast on the target channel. At the very least, a portion of revenues from any auctions should be set aside for compensation of such LPTV operators, with the new licensee ultimately responsible for any shortfall in compensation, if any. Even though secondary, LPTV stations have paid substantial sums of money to establish their stations. It is one thing to require licensees to eliminate interference; it is quite another to ask them to cease broadcasting and construct a new station entirely. Compensation under these circumstances is only just.

Respectfully Submitted,

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